

The PRESIDING OFFICER (Ms. HEITKAMP.)

Without objection, it is so ordered.

### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

### EXECUTIVE SESSION

#### NOMINATION OF NORMAN C. BAY TO BE A MEMBER OF THE FEDERAL ENERGY REGULATORY COMMISSION

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The bill clerk read the nomination of Norman C. Bay, of New Mexico, to be a member of the Federal Energy Regulatory Commission.

The PRESIDING OFFICER. Under the previous order, there will now be 2 minutes of debate prior to a vote to invoke cloture on the Bay nomination.

Mr. KAINE. I ask unanimous consent that the time be yielded back.

#### CLOTURE MOTION

The PRESIDING OFFICER. Without objection, it is so ordered.

Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Norman C. Bay, of New Mexico, to be a Member of the Federal Energy Regulatory Commission.

Harry Reid, Tom Udall, Robert P. Casey, Jr., Jack Reed, Tim Kaine, Patrick J. Leahy, Barbara Boxer, Bill Nelson, Christopher A. Coons, Richard Blumenthal, Richard J. Durbin, Christopher Murphy, Patty Murray, Martin Heinrich, Tom Harkin, Tammy Baldwin, Cory A. Booker.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Norman C. Bay, of New Mexico, to be a member of the Federal Energy Regulatory Commission shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The bill clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) and the Senator from Hawaii (Mr. SCHATZ) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER) and the Senator from Tennessee (Mr. CORKER).

Further, if present and voting, the Senator from Tennessee (Mr. ALEX-

ANDER) would have voted "nay" and the Senator from Tennessee (Mr. CORKER) would have voted "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 51, nays 45, as follows:

[Rollcall Vote No. 222 Ex.]

#### YEAS—51

Baldwin	Harkin	Murray
Bennet	Heinrich	Nelson
Blumenthal	Heller	Pryor
Booker	Hirono	Reed
Boxer	Johnson (SD)	Reid
Brown	Kaine	Rockefeller
Cantwell	Klobuchar	Sanders
Cardin	Landrieu	Schumer
Carper	Leahy	Shaheen
Casey	Levin	Stabenow
Coons	Manchin	Tester
Donnelly	Markey	Udall (CO)
Durbin	McCaskill	Udall (NM)
Feinstein	Menendez	Warner
Franken	Merkley	Warren
Gillibrand	Mikulski	Whitehouse
Hagan	Murphy	Wyden

#### NAYS—45

Ayotte	Flake	Moran
Barrasso	Graham	Murkowski
Blunt	Grassley	Paul
Boozman	Hatch	Portman
Burr	Heitkamp	Risch
Chambliss	Hoeven	Roberts
Coats	Inhofe	Rubio
Coburn	Isakson	Scott
Cochran	Johanns	Sessions
Collins	Johnson (WI)	Shelby
Cornyn	King	Thune
Crapo	Kirk	Toomey
Cruz	Lee	Vitter
Enzi	McCain	Walsh
Fischer	McConnell	Wicker

#### NOT VOTING—4

Alexander	Corker
Begich	Schatz

The PRESIDING OFFICER. On this vote the yeas are 51, the nays are 45. The motion is agreed to.

#### CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, there will be 2 minutes of debate prior to the vote to invoke cloture on the LaFleur nomination.

Who yields time?

Mr. REID. I yield back the time.

The PRESIDING OFFICER. Without objection, all time is yielded back.

Pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

#### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the nomination of Cheryl A. LaFleur, of Massachusetts, to be a Member of the Federal Energy Regulatory Commission.

Harry Reid, Tom Udall, Robert P. Casey, Jr., Cory A. Booker, Jack Reed, Tim Kaine, Patrick J. Leahy, Barbara Boxer, Bill Nelson, Christopher A. Coons, Angus S. King, Jr., Richard Blumenthal, Richard J. Durbin, Christopher Murphy, Patty Murray, Tom Harkin, Tammy Baldwin.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Cheryl A. LaFleur, of Massachusetts, to be a Member of the Federal Energy Regulatory Commission for the term expiring June 30, 2019, shall be brought to a close?

The yeas and nays are mandatory under the rule.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Alaska (Mr. BEGICH) and the Senator from Hawaii (Mr. SCHATZ) are necessarily absent.

Mr. CORNYN. The following Senators are necessarily absent: the Senator from Tennessee (Mr. ALEXANDER), the Senator from Oklahoma (Mr. COBURN), and the Senator from Tennessee (Mr. CORKER).

Further, if present and voting, the Senator from Tennessee (Mr. ALEXANDER) would have voted "yea" and the Senator from Tennessee (Mr. CORKER) would have voted "nay."

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 85, nays 10, as follows:

[Rollcall Vote No. 223 Ex.]

#### YEAS—85

Ayotte	Hagan	Murray
Baldwin	Harkin	Nelson
Barrasso	Hatch	Paul
Bennet	Heinrich	Portman
Blumenthal	Heitkamp	Pryor
Blunt	Heller	Reed
Booker	Hirono	Reid
Boozman	Hoeven	Risch
Boxer	Inhofe	Rockefeller
Brown	Johanns	Rubio
Burr	Johnson (SD)	Sanders
Cantwell	Johnson (WI)	Scott
Carper	Kaine	Sessions
Casey	King	Shaheen
Coats	Kirk	Shelby
Cochran	Klobuchar	Stabenow
Collins	Landrieu	Tester
Coons	Leahy	Thune
Cornyn	Lee	Toomey
Crapo	Levin	Udall (CO)
Donnelly	Manchin	Udall (NM)
Durbin	Markey	Vitter
Enzi	McCain	Warner
Feinstein	McCaskill	Warren
Fischer	McConnell	Whitehouse
Flake	Menendez	Wicker
Franken	Merkley	Wyden
Graham	Murkowski	
Grassley	Murphy	

#### NAYS—10

Cardin	Isakson	Schumer
Chambliss	Mikulski	Walsh
Cruz	Moran	
Gillibrand	Roberts	

#### NOT VOTING—5

Alexander	Coburn	Schatz
Begich	Corker	

The PRESIDING OFFICER. On this vote the yeas are 85, the nays are 10. The motion is agreed to.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:48 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Ms. BALDWIN).

## EXECUTIVE SESSION

NOMINATION OF NORMAN C. BAY  
TO BE A MEMBER OF THE FED-  
ERAL ENERGY REGULATORY  
COMMISSIONNOMINATION OF CHERYL A. LA-  
FLEUR TO BE A MEMBER OF  
THE FEDERAL ENERGY REGU-  
LATORY COMMISSION—Continued

The PRESIDING OFFICER. Under the previous order, the time until 3:15 p.m. will be equally divided and controlled between the two leaders or their designees. If neither side yields time, both sides will be equally charged.

The PRESIDING OFFICER. The Senator from Alaska.

Ms. MURKOWSKI. Madam President, are we in a quorum call presently?

The PRESIDING OFFICER. We are not.

Ms. MURKOWSKI. Madam President, I have come to speak about the two nominees on the executive calendar who are before us this afternoon. Norman Bay and Cheryl LaFleur are nominated to be commissioners on the Federal Energy Regulatory Commission, FERC, an increasingly critical, independent regulatory commission.

As the Senate has considered these nominations, there has been kind of a weird drama that has played out throughout the entire community that follows the FERC and, as I understand, the agency itself has been really very distracted by it. Many are concerned the wrong person is set to take over as chair of the FERC and that the Commission is at risk of losing its reputation for objectivity. So for the benefit of Senators who are not on the energy committee and for members of the public who have not followed the controversy surrounding these nominees, let me provide a little bit of perspective this afternoon.

Both nominees have been serving at the FERC. Ms. LaFleur currently leads the agency as its chair. She has done so with distinction for the better part of a pretty difficult year. This is a year that has brought about the polar vortex and challenges to bulk power system reliability. The other individual, Mr. Bay, is an employee. He is the director of the agency's Office of Enforcement. He was appointed to that post by its somewhat controversial former chair, John Wellinghoff of Nevada.

If confirmed, Mr. Bay will become the first FERC employee in the agency's history who would go directly and immediately to the commission itself, despite just 5 years of relevant experience. Furthermore, Mr. Bay will not only be elevated to the post of commissioner; President Obama has announced that Mr. Bay will be designated as chairman after his confirmation. That means that Ms. LaFleur, the FERC's only female commis-

sioner, will be demoted when Mr. Bay takes over as chair. How soon Ms. LaFleur's demotion will take place is unclear at this moment.

At the energy committee's business meeting to consider these nominees, there was a lot of talk about a deal that would allow Ms. LaFleur to remain as chair for a period of time. It was suggested that this would give Mr. Bay some much needed on-the-job training as a rank and file commissioner. So there was a lot of discussion going back and forth. I was certainly part of that discussion. But talk of a deal and confirmation of a deal, giving the assurances that certainly this Senator has sought and yet was not given—talking about a deal and getting a deal are two different things.

So as we discuss where we are with these nominees, I think it is important to recognize that even if Ms. LaFleur stays on for a period of months—whether it is 9 months as some have suggested the deal is or a different period of time—what we understand is that Ms. LaFleur will only be allowed to continue in an acting capacity.

So stop and think about this. We have President Obama who has nominated Ms. LaFleur twice for high office, and despite what I think has been her distinguished service as a commissioner and as chair of the FERC, the White House dismisses her as an acting chair. The administration reportedly has limited her authority even to hire staff. As some have suggested, this is just a technicality and this is what happens within the Commission. That is not my understanding at all. I would view it as an affront. If one is going to be the chair, one should have the full authorities of the chair.

Even though I disagree with “Acting” Chair LaFleur on some key policy matters, by all accounts, from both Republicans and Democrats, she is doing a good job. She is fair. She seeks balance. She has the temperament I think we need for this commission. She has the personal qualities of leadership we look for. She clearly has the experience. She has 25 years' worth of experience, in fact. I certainly hope she will be easily confirmed this afternoon. In fact, I hope Chair LaFleur's bipartisan support has not hurt her prospects.

Chair LANDRIEU observed during the committee's consideration of these nominees that Ms. LaFleur's renomination “was not a sure thing just a couple of months ago.” But we have to ask: Why not? Why wasn't the renomination of the only woman serving as a FERC commissioner—a Harvard-educated Obama appointee from Massachusetts—why wasn't she a sure thing from the get-go? Was it her bipartisan appeal? I would certainly hope not. Was it her good work as a chair? Again, I hope not. To me, those are reasons one would choose her to lead the FERC, not someone else.

One hint came from our majority leader, Senator REID. He recently told the Wall Street Journal that Ms. La-

Fleur “has done some stuff to do away with some of Wellinghoff's stuff.” Now, he didn't really define what “stuff” that was and didn't acknowledge that much of Mr. Wellinghoff's “stuff” was either controversial or incapable of withstanding legal challenge.

Before we turn to Mr. Bay and his unprecedented promotion from Director of the Commission's Office of Enforcement in the face of Ms. LaFleur's demotion, let's discuss the agency the White House proposes he would lead for just a second. Why does the chairmanship of the FERC matter so much? Well, the Presiding Officer sits on the energy committee. She knows. She is watching this. She is looking at the issues of reliability. In the energy world, FERC regulates “midstream everything.” The chairman is its CEO, and under his or her leadership, FERC regulates interstate natural gas and oil pipelines, LNG import and export facilities, the sale of electricity at wholesale, the transmission of electricity in interstate commerce—basically the Nation's bulk power system, practically speaking, its high voltage transmission networks, also the reliability of the bulk power system, the licensing of hydroelectric facilities and the safety of dams. The list goes on and on.

One further example is the safeguarding of sensitive information about our critical energy infrastructure—information that was compromised by FERC during the tenure of former Chairman Wellinghoff. That series of events is now subject to an ongoing inquiry by the inspector general of the Department of Energy, and it is a breach that Ms. LaFleur has vowed will not happen again.

Given the significance of this agency, let's consider Mr. Bay. So, beyond the demotion of Ms. LaFleur, and beyond his lack of relevant experience, what is causing me pause? To begin, there are questions about the fairness and transparency of the functioning of the FERC Office of Enforcement during Mr. Bay's tenure there. I haven't resolved those questions, but I know others are looking at them. Senator BARRASSO has called attention to some of the questions. He has called for an independent review of the facts in dispute.

Second is the question of the circumstances under which Mr. Bay would recuse himself from at least 43 different matters, including some high profile matters that have been pending in the Office of Enforcement on his watch. But, unfortunately, Mr. Bay apparently doesn't see a need to recuse himself from these proceedings.

Third are the answers that Mr. Bay provided to questions from those of us on the energy committee. At best, many were unclear and, at worst, his responses were simply evasive.

Finally, I keep coming back to the deal—the waiting period that was needed to attract enough support on the Democratic side to report Mr. Bay's nomination from committee. So we